FAMILY

Law guide – Cohabiting outside of marriage

Contents

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Prenuptial agreements

Introduction

A pre-nuptial agreement (also called an ante-nuptial agreement) is an agreement entered into by a couple before they get married. In some cases a couple may enter into a post-nuptial agreement after they get married.

Pre-nuptial agreements vary according to each couple's particular circumstances but generally they make provision for financial and property matters, and other issues, following the breakdown of the marriage. They can cover issues such as lump sum payments, pensions, maintenance and custody. A couple enters into an agreement in order to try and avoid a dispute if they separate. Some pre-nuptial agreements cover issues arising during the marriage. Under Section 113 of the Succession Act 1965 a spouse can renounce his/her legal right share in a pre-nuptial agreement.

Enforcing a pre-nuptial agreement

There is nothing in Irish law which stops a couple intending to marry from signing a pre-nuptial agreement. Such agreements can serve as guides for the courts in judicial separation and divorce cases, however, the courts are not obliged to enforce them.

Only pre-nuptial agreements entered into following independent legal advice for both parties are likely to be taken into account. The court would have to be satisfied that there had been a complete disclosure of assets before the agreement was signed. There should also be an acknowledgement that the agreement is intended to be legally binding and that the agreement provides for reviews:

- periodically
- if children are born
- if there is a major change in circumstances

In addition, the agreement must be fair and reasonable. The court must be satisfied that proper provision having regard to the circumstances has been or will be made for the spouses and any dependant members of the family. This certainly means that a prenuptial agreement is but one factor, which will be taken into consideration by a court in family law proceedings. However, well drafted, fair and transparent agreements will go a long way to ensuring that the practicalities of a break up is well managed and disputes are kept to a minimum.

Getting married

Introduction

Marriage is a solemn legal contract therefore it is vital that all necessary preliminaries for a marriage be completed in order that the marriage be legally valid.

The marriage provisions of the Civil Registration Act, 2004 have been amended by the Civil Registration (Amendment) Act 2012 which became law in January 2013. This legislation brought about major changes in the procedures for solemnising and registering marriages.

Minimum age of marriage

Under the Family Law Act, 1995 the minimum age at which a person, ordinarily resident in the State, can enter into a contract of marriage is 18 years. All persons making an application to get married in the State must provide a Registrar with evidence of age and identity. Persons under the age of 18 must get the permission of the Circuit Family Court or the High Court in order to get married.

Notification

Any couple proposing to get married should contact their local registration office in order to make an appointment to meet the Registrar in order to give them their marriage notification. While the couple must give three months' notice of their intention to get married, they should contact the Registrar well in advance in order to get a timely appointment.

When attending the Registrar's office in relation to the notification, the couple must also pay the notification fee of €200 and provide the Registrar with evidence of their name, address, age, civil status and nationality.

In addition to their own personal documentation, the couple will be requested to provide details in relation to their proposed marriage such as:

- the intended date of marriage
- whether they require a civil, religious or secular ceremony
- the names and dates of birth of their witnesses, and
- details of the proposed solemniser and venue

The couple will also have to complete a declaration of no impediment stating that they are unaware of any lawful impediment to the proposed marriage.

Marriage registration form

When the Registrar is satisfied that all required details have been provided and the couple are free to marry, he or she will issue them with a Marriage Registration Form (MRF) based on the information they have provided. This is a critical document as it is effectively the civil authorisation for the marriage to proceed. All couples wishing to marry must first be issued with a MRF and any marriage that takes place without this form having been issued cannot be civilly registered. The MRF should be given to the registrar or religious or secular solemniser solemnising the marriage prior to the ceremony.

Requirements for a valid marriage

Marriage by religious or secular ceremony

Marriages by religious ceremony or secular ceremony are performed according to the beliefs, rites and ceremonies of the religious body or secular body which is carrying out the ceremony and a registered solemniser may only solemnise a marriage according to the beliefs, rites and ceremony of a religious body or a secular body if he/she is a recognised member of that body.

However, all the civil requirements as mentioned above must be met and the couple must have been issued with a MRF by a Registrar which they must show to the person solemnising the marriage. The solemniser must be a registered solemniser and it is up to the couple to make sure that he is on the Register of Solemnisers.

All marriages - civil, religious or secular - must take place in venues which are open to the public.

The ceremony must be performed in the presence of two witnesses who are both over 18 years of age. Both parties must make two declarations: -a) that neither of them knows of any impediment to the marriage and b) that they accept each other as husband and wife.

At the end of the ceremony, the solemniser, the couple, and the witnesses must all sign the MRF. The completed MRF should be given to a registrar within one month of the ceremony, so that the marriage can be civilly registered.

Marriage by civil ceremony

Marriages by civil ceremony may take place at the office of a Registrar of Civil Marriages at a venue which has been agreed between the couple and the Registrar and approved in advance by the Registrar. If you wish to have a civil ceremony at a venue other than a Registry Office, you must contact the Registration Office in the area where the venue is located and apply to have the venue approved for the solemnisation of your civil marriages. This may involve the Registrar making an inspection of the venue. In order that the venue can be inspected in good time for your intended marriage, it is recommended that you make these arrangements well in advance of your notification appointment with the Registrar.

Guidelines for venues for civil marriages

- The ceremony room must be a seemly and dignified venue for the solemnisation of marriages.
- The ceremony room must have adequate capacity to accommodate, comfortably seated, the numbers attending the ceremony.
- It must be held in a venue that is open to the public.

- The ceremony room and venue in which it is situated must have adequate public liability insurance.
- The ceremony room must be open to all, in particular to persons with disabilities.
- The place where the marriage is to be solemnised must be a fixed structure.

Please note that there will be additional fees for civil marriages at venues other than registry offices. The Registrar will advise you of what fees are due when you are giving your notification.

Couples undergoing a civil ceremony must have been issued with an MRF by a registrar, not necessarily the same registrar who is performing the ceremony. The ceremony must be performed in the presence of two witnesses who should be both over 18 years of age.

Remarriage of persons who have been previously married

If either party has been married previously (i.e. is divorced or widowed), it is necessary for that party to produce either Divorce Decree (Absolute) or a Death Certificate, as appropriate.

If either of the parties to a proposed marriage were previously married, or in a civil partnership this fact should be brought to the attention of the Registrar of Marriages at the time that the notification to marry is being given by the parties to the proposed marriage.

Living together as cohabitants

Introduction

In the past unmarried cohabitants and their families had significantly fewer rights and responsibilities than their counterparts who were married.

However, following the introduction of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 the position has changed substantially and cohabiting couples, irrespective of the sexual orientation, now have substantial rights and protection which will allow them seek redress in the courts.

Thus, while there is no such thing as a 'common law husband and wife' Irish couples living together now have certain rights in the event of a breakup of their relationship.

Who are cohabitants?

Cohabitants are two opposite or same-sex adults who are:

- living together in an intimate and committed relationship
- not married to each other
- not in a registered civil partnership
- not related to each other

Qualified cohabitants

Under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010, unmarried and same sex couples living together can avail of similar orders to those of married couples who are going through a separation or divorce, under a redress scheme.

In order to avail of these redress orders under the scheme you must be a qualified cohabitant. That is you must have been:

- cohabiting with someone for a period of at least five years
- cohabiting with someone for a period of two years if you have a child with that person

Where one of the cohabitants is still married, neither of the cohabitants will be considered a qualified cohabitant unless the married cohabitant has lived apart from his/her spouse for at least four of the previous five years.

Redress orders

The types of orders you may apply for under the redress scheme include property adjustment orders, maintenance orders and pension adjustment orders. It is important to remember that cohabitants do not have any automatic right to get such orders. A court will

only make such orders if it is satisfied that one partner was financially dependent on the other cohabitant partner.

Property rights of cohabiting couples

If you are buying (or thinking about buying) a home with your partner, you should consider in advance which is the best home ownership option for you. In Ireland, joint ownership of property for cohabiting couples can be held in one of two ways;

- Joint tenancy
- Tenancy in common

Considering which is the best option for you means being prepared for what you wish to happen in in the event of the death of either partner, or the breakup of your relationship.

Joint tenancy

This means the whole property is owned by two people with the intention that, when one dies, the other person will automatically own all of the property. In situations where one person has paid for the property, the other person may not get 50% of the proceeds if the house is sold. In situations such as this, you need to check your situation with a solicitor.

Tenancy in common

Where a property is held by persons as tenants in common this means the property is owned in defined shares by each person. Each person can leave their share of the property to whomever they wish. They may leave their share to their partner for example, but they must make a will stating this fact. If no will is made, the share becomes part of the estate of the deceased partner and the other partner does not have any automatic right to the share. Instead, the family (or even a separated spouse or civil partner) of the deceased person can claim this share.

Property rights following the breakdown of a cohabiting relationship

If a cohabiting couple in Ireland splits up, the family home (and other family assets) will belong to the person who holds the legal title to the home/assets. This means that in the case of the family home, the person who originally bought the house and whose name is on the title deeds will usually own the house..

However, if your relationship breaks down and your name is not on the title deeds to the house, you may still be able to show that you have some ownership rights in relation to the house. These rights are based on the fact that you may have made a contribution, directly or indirectly, to the purchase price of the house with the intention of gaining a share in the ownership of the house.

Contributions to the purchase price of the house can be direct or indirect. Direct contributions include contributions to the initial down payment for the house or

contributions to the mortgage instalments. Indirect contributions may, for example, include paying some of the other day-to-day household expenses or unpaid work in the business of the legal owner of the house.

It has been held by the courts that working in the home looking after children and money spent or work done on home improvements are not contributions that give you any right of ownership in relation to the house.

Inheritance rights of cohabiting couples

The first point to make is that cohabiting couples have no right to inherit from each other. If you are a qualified cohabitant you can apply for provision from the net estate of the deceased within six months after the probate or administration is first granted. An order under this section will not affect the legal rights under the Succession Act 1965 of a surviving spouse or civil partner.

Principal Private Residence Relief allows an individual to receive a gift or inheritance of a residential property free from capital acquisitions tax (CAT), popularly known as inheritance tax or gift tax, if the following conditions are met:

- The premises is/was the beneficiary's principal private residence for three years prior to the gift or inheritance.
- The individual has no beneficial interest in any other residential property in the State.
- The individual remains living in the property for six years after the gift or inheritance. This does not apply, however, if you are over 55 years of age.

Children of cohabiting couples

Guardianship

If a child is born outside of marriage, the mother is the sole guardian. The position of the unmarried father of the child is not so certain. If the mother agrees, the father can become a joint-guardian if both parents sign a statutory declaration. This statutory declaration (SI 5 of 1998) must be signed in the presence of a peace commissioner or a commissioner for oaths. A copy of the statutory declaration is available from the Treoir website at www.treoir.ie.

This declaration states the names of the parents of the child, that they are unmarried and that they agree that the father should be appointed as a joint-guardian. The declaration also states that the parents have agreed arrangements regarding custody of and access to the child. If there is more than one child, a separate statutory declaration should be made for each.

However, if the mother does not agree to sign the statutory declaration or agree that the father be appointed as joint guardian, the father must apply to the court to be appointed as a joint-guardian. You do not require legal representation to do this, you can make the application on your own behalf. Apply directly to the District Court and contact the clerk of the court to institute proceedings. This is possible, irrespective of whether your name is on the child's birth certificate or not.

Importantly, even if the mother does not consent to the guardianship application this does not mean that the court will refuse the order sought by the father. Ultimately, the court will decide what is in the best interest of the child. Where the father has been appointed joint guardian, his consent will be required for certain things relating to the child’s general welfare and other items.

Removal of guardianship rights

Fathers who have been appointed joint guardians by a court or by statutory declaration can be removed from their position if the court is satisfied it is in the child's best interest. The only way a mother can give up her guardianship rights in Ireland, is if the child is placed for adoption.

Custody of children

Custody is the right to the physical care and control of a child. When the unmarried parents of a child separate and they cannot agree on who should have custody of the child, the court may have to decide.

When the court is making its decision about who should have custody of the child, the most important factor for it is the welfare of the child. Welfare includes the child's religious, moral, intellectual, physical and social welfare.

What the courts decide

In general, the courts tend to consider that where the parents of the child are unmarried, it is in the child's best interests to live with its mother. The unmarried mother has a superior legal position to the unmarried father and will usually be granted custody. However, the courts will usually grant a right of access to the unmarried father so that he can have regular contact with his child.

As part of the decision-making process, the court will consider the moral example given by a parent to his or her child, the influence that parent's behaviour may have on the child's development and the manner in which the parent's conduct is likely to affect the child's welfare.

The current legislation on guardianship and custody of children in Ireland does not prevent a parent who has entered into a same-sex relationship from having custody of a child. However, if there is a dispute between the parents it is up to the court to decide, and a court could hold that the parent's involvement in a same-sex relationship could affect the child's welfare.

It is not uncommon for a judge to place restrictions on access where one parent has a new relationship. This is done on the basis that introducing a new partner to a child can be a delicate matter. The court may require, or you might want to present, a psychological assessment carried out by a child psychiatrist or psychologist. Legal aid may pay for this assessment. Usually where professional opinions are sought by the court it will be greatly influenced by the conclusions of the professional.

Children placed for adoption

If the unmarried mother does not want custody of the child and intends placing it or has already placed it for adoption, the unmarried father may still apply for custody of the child. The essential issue for the court in deciding whether the father should have custody will be the welfare of the child. The length of time that the child has been with the adoptive parents will be a very important factor.

Maintenance of children

Both parents have a responsibility to share in providing financially for their child. Paying maintenance does not in itself give a parent any access or guardianship rights. It may be useful to record the payment of maintenance in case this record needs to be shown at a later date.

Parents are responsible for maintaining their dependent children up to the child's 18th birthday or up to the age of 23 years if the child is in full time education, or would be if maintenance was being paid. If the child has a mental or physical disability to such an extent that it is not reasonably possible for the child to maintain her/himself fully then there is no upper age limit for seeking maintenance for her/his support.

How can maintenance be arranged

Parents can make informal arrangements regarding maintenance and this can work well where parents are reasonable and fair. Parents can include these arrangements in a Deed of Separation, which is a legally binding document. If they wish they can have the maintenance arrangements made a rule of court (see below). An agreement does not rule out the possibility of applying for a maintenance order through the courts at a future date.

It can be difficult to assess how much maintenance should be paid. It might be useful to write down the actual expenses of the child. Treoir has an expenses sheet which may help you with this. If parents are having difficulty agreeing maintenance they can try mediation or collaborative law.

Maintenance through the courts

Either parent may apply to the court for a maintenance order against the other parent for a dependent child. It is necessary to have an address for the other parent. The court may order the non-resident parent to pay a regular amount based on income and expenses. The maximum that the District Court can order from either parent is €150 per week for each child. There is no limit in the Circuit or High Courts. The maximum lump sum the District Court can award is €15,000.

Cohabitation agreements

Introduction

When a couple live together but do not intend to marry or enter into a civil partnership, they should protect their financial interests by entering into a cohabitation agreement. This agreement will allow cohabiting couples to specify the day-to-day joint financial arrangements of their relationship, such as the payment of joint debts or common household expenses. This agreement also provides a framework by which a couple will agree to separate their assets and liabilities should their relationship come to an end, including the joint home, which might otherwise lead to lengthy legal disputes.

The law governing cohabitant's rights was reformed in 2010 when the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was introduced and this legislation specifically provides for such agreements. Furthermore this legislation defines specific rights of cohabitants making an agreement which covers the financial relationship and other matters between the parties even more relevant.

The purpose of cohabitation agreements

A cohabitation agreement has two main purposes:

1. to determine how a cohabiting couple's joint and individual finances will be managed on a day-to-day basis, including the payment of joint household expenses (i.e. bills) and the ownership of joint and individual assets
2. to specify how finances and assets will be distributed should the couple's relationship come to an end

Validity of cohabitation agreements

Cohabitants may enter into a cohabitants' agreement to provide for financial matters during the relationship or when the relationship ends, whether through death or otherwise. A cohabitants' agreement is valid only if:

- the cohabitants have each received independent legal advice before entering into it
- the cohabitants have received legal advice together and have waived in writing the right to independent legal advice
- the agreement is in writing and signed by both cohabitants
- the general law of contract is complied with

A cohabitants' agreement may provide that neither cohabitant may apply for an order for redress provided for in the Act, i.e. a property adjustment, maintenance or pension adjustment order, or an order for provision from the estate of his or her cohabitant.

The court may vary or set aside a cohabitants' agreement in exceptional circumstances, where its enforceability would cause serious injustice. An agreement that meets the other criteria of this section shall be deemed to be a cohabitants' agreement under this section even if entered into before the cohabitation has commenced.

Legal advice

To ensure that your cohabitation agreement has the best chance of being legally enforceable, it would be advisable that each member of the couple should take independent legal advice as to the terms and conditions of the agreement before signing it. Even if you have purchased legal support for this document, for professional legal reasons, it is not possible for both you and your partner to be advised by our legal team; our legal team can only advise one of you on the suitability of the agreement. The other party will need to obtain independent legal advice on the agreement to confirm that he or she fully understands and agrees to the implications and consequences of his or her actions. This does not mean that each of you has to pay for your own set of advice - one person can pay for both sets of advice.

Joint banking

A couple may decide to open a joint bank account to which they will each contribute a set sum each month and from which they may withdraw specified sums, such as joint living expenses and cheques. Opening a joint bank account in the names of both parties can be a very convenient way of making sure that household bills are paid on time by arranging for their payment by direct debit. The opening of a joint account does not prevent a couple from maintaining a personal account.

If the cohabiting couple should split up then the joint account should be closed and its balance may be divided. The general presumption with joint bank accounts is that the funds are intended to be a joint pool and are divided equally regardless of contribution. However, in this document you may specify that you wish to split the joint funds in any one of the following ways should this agreement terminate and you close your joint account:

- equally
- proportionately (in accordance with your monthly contributions)
- repaid to the contributing party (where only one party contributes to the joint account)
- in another specified proportion

Making a Will

Introduction

If you are married or in a civil partnership, the Succession Act 1965 gives your surviving spouse/civil partner a legal right to a share of your estate when you die, no matter what you have said or specified in your will. This does not apply to cohabiting couples. In other words, if you are in a cohabiting relationship, there is nothing to prevent you from leaving some or all of your property to your partner in your will.

When couples decide to cohabit it is sensible for both parties to make new wills to reflect their new circumstances. Additionally, if one of the parties is elderly or has a serious health condition it may be appropriate to create a power of attorney to enable your cohabitee to act on your behalf. This could include withdrawing money from an account to pay a bill or selling an asset. It might also include taking care of matters related to your personal welfare, such as taking care of your social and healthcare needs.

Cohabiting couples and making a Will

Making a Will is important for everyone but even more so for unmarried couples. Unmarried couples should consider making a Will in favour of their partner. If they don't, their estate will pass to their immediate family or in some cases to the State under the intestacy rules and not to their partner. This might leave the surviving partner with serious financial problems.

An unmarried partner will also not be entitled to administer their deceased partner's estate as they were not legally related. This right must be specifically provided for in the Will.

Under the redress scheme for cohabiting couples a qualified cohabitant may apply for provision to be made from the estate of a deceased cohabitant. Where the partner dies in an existing relationship, it is also not necessary to show financial dependence.

The natural children of parents who are born inside or outside marriage and adopted children have the same inheritance rights.

In the case of a cohabiting couple where the surviving partner inherits the family home, the surviving partner may be liable for inheritance tax unless they qualify for principal private residence capital gains tax exemption.

Making a will can ensure that proper arrangements are made for your dependants and that your property is distributed in the way you wish after you die, subject to certain rights of spouses/civil partners and children. It is possible to draft your own Will or you can do so with the help of a solicitor.

Powers of attorney

Introduction

At any stage in life people can become unable to manage their own affairs for a variety of reasons. They may be incapacitated by an accident, ill-health or the onset of mental illness. This makes the paying of bills, the managing of financial decisions and other important everyday routines difficult and in some cases impossible. It is therefore important to consider appointing an attorney to act under a power of attorney before this happens.

A power of attorney can give your partner the legal right to manage your affairs, if you should become unable to manage them yourself or to communicate your wishes.

Why is a power of attorney useful?

A power of attorney (POA) can be used to give another person the right to manage either or both your financial affairs and your personal welfare, in the event that you should become unable to manage it yourself. A power of attorney can also be used to give another person the right to deal with your property for a limited period of time.

It is worth planning ahead because once you become unable to manage you affairs due to mental incapacity, you will no longer be able to grant a valid power of attorney. It therefore makes both practical and financial sense to consider appointing an attorney under a power of attorney before that day arrives.

What power of attorney do I need?

The first issue to decide is whether you want the POA to be valid only while you have the mental capacity to make your own decisions, or whether you want it to remain valid after that point.

You may lose your mental capacity due to factors such as illness, an accident or the onset of conditions like dementia. Your relatives will not automatically have the authority to take control of your affairs and act on your behalf. They can only do so if you have appointed them as your attorney(s) in an appropriate POA that you created while you were still of sound mind. This is referred to as an enduring power of attorney.

If you do not want the POA to remain valid in the event that you lose the capacity to act on your own behalf, then you will need a general power of attorney.

General power of attorney

This document is also known as an ordinary power of attorney.

A general power of attorney cannot be used after the person who made it (the 'donor') has lost the capacity to make his or her own decisions. This type of POA is intended for use over

a limited period of time - for example, if you will be out of the country and you need another person to look after your affairs during that time.

Enduring power of attorney

An enduring power of attorney (EPA) will only become effective if you, as the donor, have lost the capacity to act on your own behalf. However, the attorney(s) to be appointed in the EPA will not have the authority to act on your behalf unless the EPA is registered with the Registrar of the Wards of Court

You may need this type of power if, for example, you are in the early stages of Alzheimer's and you want to ensure that you and all your interests are looked after by a person whom you know and trust.

Domestic violence

Overview

Domestic violence is where one person tries to control and assert power over another their partner in an intimate relationship. It can be physical abuse, emotional abuse or sexual abuse. In the majority of cases it is perpetrated by men, but women can also be guilty of domestic violence.

Physical abuse

Physical abuse is perhaps the most common form of abuse. It can result in physical injury and in some cases it can be life threatening. It doesn't always leave visible marks or scars. Examples of physical abuse include being pushed, punched, bitten or severely beaten.

Emotional abuse

Emotional abuse is a method of establishing a power imbalance within a relationship. It is often unseen or intangible to those outside the relationship. It can be as damaging as physical abuse. It can involve threats of physical and sexual abuse. Some examples of emotional abuse include being put down, being constantly criticised, being constantly controlled and monitored by the use of technology.

Sexual abuse

Sexual abuse is more likely to occur where there is an element of control or abuse in an intimate relationship. In the majority of cases it will be women who are subjected to this type of abuse by their partners. Sexual abuse includes being repeatedly raped and beaten, being raped in front of their children, being asked to perform unwanted acts of a sexual nature.

Protection available for victims of sexual abuse

The Domestic Violence Act, 1996 provides for the protection, safety and welfare of married couples, cohabiting couples, parents, children and anybody else in a domestic relationship. Where an incident of domestic abuse has been reported Gardai have the power to arrest and prosecute a violent family member for perpetrating such an act.

Under the Domestic Violence Act the following orders may be obtained;

- Barring Order
- Safety Order
- Protection Order

Barring Order

This order requires the violent person to leave the family home until the order expires or is set aside. The District Court may grant a barring order for up to three years and an application can be made for an extension. There is no time limit on such an order if made by the Circuit Court.

Once a Barring Order is granted, the offender must;

- leave the home
- not use, or threaten to use violence against the applicant
- not molest the applicant or put them in fear
- not be in the area where the applicant lives

Safety Order

This order prevents the wrongdoer from committing any further violence, or threatening violence, against the applicant. The respondent is not required to leave the home. If the applicant and alleged offender are not living together, the court can order the alleged offender not to watch or be near the applicant's home.

Who can apply?

- the spouse of a respondent, irrespective of how long they have lived together
- an unmarried partner, who has lived with the respondent for six of the previous twelve months
- a parent can apply for an order against a child who is not a dependent (an adult child)
- a person of full age who lives with the respondent in a relationship, the basis of which is primarily non contractual

If the relationship is not based on marriage the court will consider the following;

- the length of time the people involve lived together
- the type of duties carried out by either person for the other
- if any payment was made by one person to the other for living expenses
- other matters the court considers appropriate in the circumstances

Safety Orders will be granted where the court considers there are reasonable grounds for believing that the safety and welfare of the applicant are at risk.

Duration of a Safety Order

An order made by a District Court can last up to five years. Before this order expires, an application can be made to have it extended for a further five years or for a shorter period as the court sees fit.

Protection Order

This is a temporary safety order. It gives protection to the applicant until the court decides on a safety or barring order application. It is intended to last until the case is heard and a decision made. It does not oblige the respondent to leave the family home.

Changing your name

Changing your name by deed poll

A deed poll is a signed declaration by a person that binds them to a particular course of action from the date of signing. A deed poll for a change of name contains declarations (in other words a sworn statement or affidavit) that you are abandoning the use of your old name, that you will use your new name at all times and that you require everyone to use your new name.

The advantage of changing your name by deed poll is that you then have documentary evidence that you have changed your name. This, along with your birth certificate, is acceptable for most administrative procedures and provides an easy and inexpensive solution to most of the difficulties that can arise when you change your name.

If you changed your name when you married, you do not need to execute a deed poll as you have your marriage certificate as evidence of your name change.

Executing a deed poll

The process of executing a deed poll is relatively straightforward. You declare that you have given up your former name and adopted a new name for all purposes. You must sign the deed poll in the presence of a witness. The witness must also swear an affidavit (called an 'affidavit of attesting witness') before a solicitor or commissioner for oaths.

Enrolling the deed

There is no requirement to enrol the deed poll in the Central Office of the High Court as, generally, it has no greater effect than a deed poll which has not been enrolled. However, some organisations, such as the National Driving Licence Service (NDLS), will only accept a deed poll which has been enrolled.

The enrolment of a deed poll in the Central Office places your change of name on a publicly accessible record. In addition, enrolling the deed poll means that a record of the change of name is preserved for future identification and a certified copy of the original enrolled deed poll can be obtained if required.

To enrol your deed poll you must attend in person. You will have to bring certain documentation as well as a completed application form. The application form includes an acknowledgement that enrolling the deed results in it being available for public inspection and published on the Courts Service website.

How to make an application

It is possible to make an application yourself or you can get a solicitor to do it for you. You can download a template of a deed poll from the courts website (www.courts.ie). The deed poll must be printed on deed paper which is available from legal stationers.

As mentioned before, there is no requirement to enrol the deed in the Central Office of the High court. If, however, you wish to do so you must attend the Central Office in person.

Documentation required

There is certain documentation that will be required before you can enrol the deed, namely;

- deed poll executed correctly
- evidence of your previous name
- a change of name licence (if you are a non-EU national)
- photo ID
- application form to be downloaded from Courts Service website

Change of name license

Under Section 9 of the Aliens Act, 1935 a non-EU national who wishes to assume a name other than that by which he/she was ordinarily known prior to reaching the age of majority is required to obtain a change of name licence from this Department to do so. In order for this name change to take legal effect a deed poll would also need to be executed.